

Press Release

Private Fund Administrator Charged With Gatekeeper Failures

FOR IMMEDIATE RELEASE**2016-120**

Washington D.C., June 16, 2016 — The Securities and Exchange Commission today announced that a firm providing administrative services to private funds has agreed to pay more than \$350,000 to settle charges that it failed to heed red flags and correct faulty accounting by two clients.

SEC investigations found that Apex Fund Services (US) Inc. missed or ignored clear indications of fraud while contracted to keep records and prepare financial statements and investor account statements for funds managed by ClearPath Wealth Management and EquityStar Capital Management. Both clients have since been charged with fraud in SEC enforcement actions.

“Fund administrators are responsible for ensuring that fund records provide accurate information about the value and existence of fund assets,” said Andrew Ceresney, Director of the SEC’s Division of Enforcement. “Apex failed to live up to its gatekeeper responsibility and essentially enabled the schemes to persist at each of these advisory firms until the SEC stepped in.”

The SEC’s order finds that in regard to ClearPath and its owner Patrick Churchville, who were [charged with fraud last year](#):

- Apex failed to act appropriately after detecting undisclosed brokerage and bank accounts, undisclosed margin and loan agreements, and inter-series and inter-fund transfers made in violation of fund offering documents.
- Apex failed to correct previously issued accounting reports and capital statements and continued to provide materially false reports and statements to ClearPath and the funds’ independent auditor.
- ClearPath then used Apex’s false reports and statements to communicate financial positions and performance to the ClearPath funds’ investors.

The SEC’s order finds that in regard to EquityStar and its owner Steven Zoernack, who were [charged in March](#):

- Apex accounted for more than \$1 million in undisclosed withdrawals by Zoernack from the EquityStar funds as receivables owed to the funds, despite no evidence that Zoernack was able or willing to repay the withdrawals.
- Apex confronted Zoernack about the withdrawals and concluded he was unlikely to repay the funds. Nevertheless, Apex did not properly account for Zoernack’s withdrawals – which grew to more than half of the net asset value of one fund, and more than one quarter of the other.
- Apex sent monthly account statements to investors that it knew or should have known materially overstated the investors’ true holdings in the funds.

Without admitting or denying the SEC’s findings, Apex agreed to retain an independent consultant and pay a total of \$352,449, including disgorgement of \$96,800 plus interest of \$8,813 and a penalty of \$75,000 for its role in the ClearPath fraud and disgorgement of \$89,050 plus interest of \$7,786 and a penalty of \$75,000 for its role in the EquityStar fraud.

The SEC's investigations were conducted by the Asset Management Unit and investigative teams in the Washington D.C. and Boston offices.

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Related Materials

- [SEC order - Apex \(related to ClearPath\)](#)
- [SEC order - Apex \(related to EquityStar\)](#)